

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 197 w/CS Plea Agreements
SPONSOR(S): Barreiro, Arza, and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	6 Y, 0 N	Maynard	De La Paz
2) Public Safety and Crime Prevention	18 Y, 0 N w/CS	Maynard	De La Paz
3) Judiciary	16 Y, 0 N	Billmeier	Havlicak
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 197 creates the "Officer Cheryl Seiden Act", which prevents, in cases where a law enforcement officer was a victim of crime, plea agreements which purport to bind future actions, judgment, or speech of law enforcement officers or their representatives at a court hearing, sentencing hearing, or parole hearing or any investigation unless the officer or his or her agency is notified of the agreement. Failure to comply with the notice requirement would not constitute grounds for withdrawal of a defendant's plea.

This bill takes effect on July 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0197a.ju.doc
DATE: April 2, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Plea Agreements in Criminal Cases

A person charged with a crime has a right under the federal and state constitutions to a trial by jury.¹ However, nearly all criminal cases are disposed of by a plea agreement between the state, represented by the state attorney, and the criminal defendant. In such agreements, the criminal defendant waives his or her right to trial and, in exchange, the state makes concessions. For example, the state attorney may drop other charges against the defendant, recommend a specific sentence, allow the defendant to enter a plea to a lesser charge than the charge initially filed, or reach some other agreement with the defendant. Plea agreements can contain other provisions such as provisions relating to the cooperation of the defendant in future investigations, provisions that the defendant enter drug or alcohol counseling, provisions relating to future actions by law enforcement, or provisions requiring the defendant make restitution to the victim.

The trial judge is not bound by a plea agreement but generally follows it. Florida Rule of Criminal Procedure 3.172 governs the conduct of trial judges when accepting pleas. Since a defendant is giving up constitutional rights when he or she enters a plea, the trial judge is required to inquire whether the plea is voluntary and there is a factual basis for it.² If the state and the defendant have reached an agreement and the trial judge does not concur, the plea may be withdrawn.³ A defendant may also enter a plea to the crime charged and be sentenced by the trial judge without any agreement from the state.

Either the state or a defendant may file a motion to vacate or withdraw a plea under certain circumstances.⁴ One such circumstance is failure of either party to abide by the terms of the plea agreement.

Lee v. State

In Lee v. State,⁵ the Florida Supreme Court held that a defendant must be permitted to withdraw a plea when a law enforcement officer makes an independent recommendation to the trial court that runs counter to the recommendation in the agreement entered into with the state attorney’s office. In

¹ See U.S. Const. Amend 6, and Art. I, s. 22, Fla. Const.

² See Fla.R.Crim.P. 3.172(a), (c).

³ See Fla.R.Crim.P. 3.172(g).

⁴ See Fla.R.Crim.P. 3.170; Fla.R.App.P. 9.140(b)(2).

⁵ 501 So. 2d 591 (Fla. 1987).

Lee, the defendant negotiated a plea agreement with the state attorney in which the state agreed not to recommend a specific sentence.⁶ However, in a presentence investigation report submitted to the court prior to sentencing, an agent of the Florida Department of Law Enforcement recommended a sentence of incarceration.⁷ The trial court did not allow Lee to withdraw his plea and the Supreme Court reversed the trial court. In holding that the trial court erred, the Supreme Court explained:

The state's failure to adhere to the terms of a plea agreement even when the noncompliance is purely inadvertent constitutes good cause for withdrawal of a plea under [the Florida Rules of Criminal Procedure]. As noted by the United States Supreme Court ... "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."

The narrow issue presented in this case is whether a promise contained in a plea agreement that the "state" will recommend a given sentence binds only the state attorney's office or whether it also precludes other state agents, such as state law enforcement officers, from making sentencing recommendations contrary to the terms of the agreements.

Under Florida Rule of Criminal Procedure 3.171, the prosecuting attorney represents the state in all plea negotiations. We agree ... that once a plea bargain based on a prosecutor's promise that the state will recommend a certain sentence is struck, basic fairness mandates that no agent of the state make any utterance that would tend to compromise the effectiveness of the state's recommendation.⁸

The Court of Appeals of Utah, in State of Utah v. Thurston,⁹ considered Lee and reached the opposite conclusion. That court held that a prosecutor's plea bargain does not bind other agents of the state. The court explained:

There are times when law enforcement has pertinent information not always known to the State at the time a plea bargain is consummated, and that agency should have an opportunity to present its views to the court.

We also find that sound public policy requires a plea agreement reached by a prosecutor not to be binding on other state agencies.

Binding a law enforcement agency or any other party to a prosecutor's sentencing recommendation would limit the trial court's access to all of the facts and, consequently, hinder the appropriate exercise of the judge's discretion.¹⁰

Victim Notification Regarding Criminal Proceedings

Under current Florida law, victims of crimes and their representatives are entitled to provide written or oral statements at the sentencing hearing before a court imposes a sentence. Section 921.143, F.S., places an affirmative duty on courts to permit victim statements and authorizes courts not to accept a plea and order the defendant to stand trial.¹¹ Section 960.001(1)(e), F.S., provides for advance notification to crime victims by law enforcement of court proceedings. Section 960.001(1)(g),

⁶ See Lee, 501 So. 2d at 591-92.

⁷ See Lee, 501 So. 2d at 592.

⁸ Lee, 501 So. 2d at 592-93. (citations omitted).

⁹ 781 P.2d 1296 (Utah 1989).

¹⁰ Thurston, 781 P.2d at 1300.

¹¹ See s. 921.143(3), F.S.

F.S., lists various matters, including plea agreements, that victims or families of victims of felonies involving emotional or physical trauma or a homicide shall be consulted by the state attorney. However, the statute does not limit a state attorney's discretion in offering a plea agreement to a defendant.

HB 197

HB 197 amends s. 921.143, F.S., and creates the "Officer Cheryl Seiden Act."¹² The bill provides that in any case where a law enforcement officer¹³ is a victim of crime, no plea agreement shall be proffered to the court which purports to bind future actions, judgment, or speech of law enforcement officers or their representatives at a court hearing, sentencing hearing, or parole hearing or any investigation unless notice has been provided to the officer or a representative of the officer's agency. Failure to comply with this provision would not constitute grounds for withdrawal of a defendant's plea.

This bill seeks to address particular situations in which prosecutors make agreements which would purport to bind law enforcement officers or their representatives from speaking or otherwise providing their input to the judge. Under this bill, prosecutors would notify law enforcement officers who are victims of crime prior to entering into plea agreements. This could prevent situations, such as what apparently occurred in Lee, where one agent of the state (the prosecutor) enters into an agreement and another agent of the state (a law enforcement officer) inadvertently breaks the state's agreement without knowing that the agreement existed.

C. SECTION DIRECTORY:

Section 1. Amends s. 921.143, F.S., relating to notice requirements prior to entering into plea agreements.

Section 2. Provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments"

2. Expenditures:

See "Fiscal Comments"

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments"

¹² On July 14, 1982, Officer Cheryl Seiden was killed during an armed robbery in the parking lot of her condominium complex. She was followed for fourteen miles by two assailants, one of whom demanded her hand bag, she reached for her gun, and was shot twice. The shooter was convicted of first degree murder and four counts of armed robbery and was sentenced to four life sentences and 15 years in prison, in part through the cooperation at trial of the other assailant, Dwight Eschevarria. Eschevarria's plea agreement provided that in return for his testimony at trial against his codefendant, prosecutors agreed not to oppose his parole requests during his life sentence. However, in 1999 the State Attorney at that time wrote a letter to the parole board which negatively commented on the defendant's parole bid. In December of 2001, a circuit court judge permitted Eschevarria to withdraw his plea.

¹³ The bill defines the term "law enforcement officer" as the term is used in s. 943.10, F.S.

2. Expenditures:

See "Fiscal Comments"

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a significant economic impact on the private sector.

D. FISCAL COMMENTS:

This bill does not appear to have a significant fiscal impact on state or local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article V, s. 2, Fla. Const., provides that the Supreme Court "shall adopt rules for the practice and procedure in all courts". Just as the Legislature has the power to create substantive law, the court has the power to create rules of practice and procedure in the courts. The court has established rules regarding the acceptance of pleas in Florida Rule of Criminal Procedure 3.172. To the extent that this bill limits a trial judge's ability to accept or reject pleas, it can be argued that this bill violates the constitutional requirement that the Supreme Court make rules of practice and procedure in the courts.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 6, 2003, the subcommittee on Criminal Justice approved an amended amendment which changed placement of the text of the bill within the statutes. Instead of creating a new section of law with chapter 921, F.S., the amendment creates a new paragraph within s. 921.143, F.S.

On March 13, 2003, the Committee on Public Safety and Crime Prevention amended the bill and adopted it with a Committee Substitute.

On April 2, 2003, the Committee on Judiciary reported the bill favorably.